

MEMORANDUM

Agenda Item No. 13(A)(1)

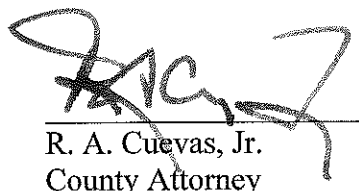
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 21, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution authorizing the
County Mayor to sign the
attached settlement agreement
between Oracle America Inc.
and Miami-Dade County to
resolve the dispute that arose in
regards to the purchase of the
Oracle Goldengate Software
under Purchase Order
POET1100336 in the amount
of \$28,926.49

The accompanying resolution was prepared and placed on the agenda by the County Attorney's Office.



R. A. Cuevas, Jr.
County Attorney


RAC/jls

Memorandum



Date: February 21, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Approval of a Settlement Agreement between Oracle America Inc. and Miami-Dade County for the Cancellation of Purchase Order POET1100336 in the Amount of \$28,926.49 for Oracle GoldenGate Software Program's License and Technical Support Services

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached settlement agreement (Agreement) between Oracle America Inc. (Oracle) and Miami-Dade County (County) cancelling Purchase Order POET1100336 in the amount of \$28,926.49 for the Oracle GoldenGate Software (Software) license and technical support services.

Under this Agreement, both parties consent to cancel Purchase Order POET1100336 in the amount of \$28,926.49 which releases Oracle from the obligation to provide the County with the Software or any technical services under that purchase order and the County from owing any money to Oracle.

SCOPE

The impact of the license and support services provided to the County have a countywide impact.

FISCAL IMPACT/FUNDING SOURCE

There is a positive fiscal impact to the County in the amount of \$28,926.49 by cancelling Purchase Order POET1100336.

The funding source that will be credited the \$28,926.49 is Internal Service Funds from the Information Technology Department (ITD).

TRACK RECORD/MONITOR

ITD's Procurement Supervisor will monitor the implementation of this Agreement.

DELEGATED AUTHORITY

This item authorizes the County Mayor or County Mayor's designee to execute this Agreement on behalf of the County.

BACKGROUND

In January 2011, on behalf of the Seaport Department, ITD engaged Oracle America Inc. under original Contract No. BW7289-4/08 approved by the Board on March 11, 2003 through Resolution R-226-03 to upgrade the Database Management System that supports the Seaport's mission critical Security and Operational Applications. This software supports the Seaport's Cargo Gate Security System, Company Permitting System, Application Security System, Billing and Accounts Receivable System, Vessel Scheduling, ID Badging, Ground Transportation, Cashiering, Job Cost Accounting, and Customer Contact System.

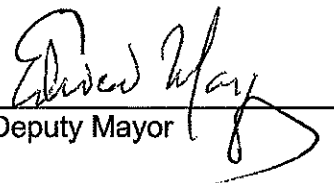
Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
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Oracle advised Seaport that the procurement of Oracle GoldenGate Software would expedite the upgrade to the newer version, resulting in a significant reduction of the database unavailability from three days to less than 12 hours. Due to the mission criticalness of the Seaport applications to the business of the Port of Miami, the Seaport agreed to purchase the Software.

Once delivered, and after four weeks of implementation, the Seaport Department determined that the Oracle GoldenGate Software did not perform as specified and therefore requested Oracle to accept the return of the Software and agree to the cancellation of the Purchase Order.

Under the Agreement both parties consent to cancel Purchase Order POET1100336 in the amount of \$28,926.49, which releases Oracle from providing the County with the Program or any technical services or support for the Program, and the County from owing any money to Oracle.

Attachment


Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 21, 2012

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☒ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
2-21-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR
MAYOR'S DESIGNEE TO SIGN THE ATTACHED
SETTLEMENT AGREEMENT BETWEEN ORACLE AMERICA
INC. AND MIAMI-DADE COUNTY TO RESOLVE THE
DISPUTE THAT AROSE IN REGARDS TO THE PURCHASE
OF THE ORACLE GOLDENGATE SOFTWARE UNDER
PURCHASE ORDER POET1100336 IN THE AMOUNT OF
\$28,926.49

WHEREAS, in January 2011 Miami-Dade County engaged Oracle America Inc. Corp.
under original Contract No. BW7289-4/08 approved by the Board of County Commissioners in
March 11, 2003 through Resolution 226-03, to upgrade the Database Management System that
supports the Seaport's mission critical Security and Operational Applications from Version 9i to
Version 11i; and

WHEREAS, Miami-Dade County agreed to pay Oracle America Inc. a license fee of
\$25,046.88 for the Oracle GoldenGate Software ("the Software") that would expedite such
upgrade, plus \$3,879.61 for one year of technical support for the Program for a total of
\$28,926.49; and

WHEREAS, after delivery and four weeks of implementation of the Software, the
Seaport Department determined that the Software did not perform as warranted and requested
that Oracle America Inc. accept the return of the Oracle GoldenGate Software and agree to the
cancellation of Purchase Order POET1100336 in the amount of \$28,926.49; and

WHEREAS, Oracle America Inc. has agreed to the cancellation of Purchase Order POET1100336 in the amount of \$28,926.49, has accepted the return of the Software and has released the County from any debt related to the purchase of this Software; and

WHEREAS, this Board wished to resolve this dispute as outlined in the accompanying memorandum and attached settlement agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and authorizes the County Mayor or Mayor's designee to execute the Settlement Agreement between Miami-Dade County and Oracle America Inc., in substantially the form attached to this resolution.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of February, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Oren Rosenthal

January 19, 2012

Julian R. Manduley, C.P.M.
IT Contracts & Procurement Supervisor
Miami-Dade County Information Technology Department
5680 S.W. 87th Avenue
Miami, FL 33173

Re: Cancellation of Purchase Order POET1100336

This letter agreement (the "Agreement") is entered into by and between Oracle America, Inc. ("Oracle") and Miami-Dade County, Florida (the "County") and is effective on the date when the County signs. This Agreement is made with reference to the facts described in the paragraph below.

On or about January 18, 2011, the parties signed an Ordering Document that incorporated the terms of Software License and Services Agreement SLSA-218501-08-APR-03, County Contract BW7289-4/08 (the "Ordering Document"). In the Ordering Document, the County purchased a license to use and technical support services for Oracle GoldenGate software (the "Program"). The County agreed to pay Oracle a license fee of \$25,046.88 and technical support fee of \$3,879.61, and submitted Purchase Order POET1100336. After receiving Purchase Order POET1100336, Oracle invoiced the fees in Invoice 2556524 dated February 11, 2011.

The parties agree to the following terms:

1. The County agrees to cancel Purchase Order POET1100336 and agrees that Oracle is not obligated to provide any products or services under that purchase order or the Ordering Document.
2. Oracle agrees to cancel Invoice 2556524 and agrees that the County does not owe any money under that invoice or the Ordering Document.
3. As of this Agreement's effective date, the Ordering Document and the Program license and technical support services ordered therein are terminated. The County understands and agrees that it has no further rights to use the Program and to receive technical support services for the Program. The County also agrees that it shall (1) immediately stop using the Program and services; (2) immediately return or destroy all original copies of the Program and Program documentation; (3) immediately destroy or erase all copies of the Program in all forms, partial or complete, from computer memory or any other type of media, whether or not modified or

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merged into other materials, programs, or devices; and (4) immediately destroy all media that contained the Program. By this Agreement, the parties do not intend to and do not terminate Software License and Services Agreement SLSA-218501-08-APR-03, County Contract BW7289-4/08.

4. The County and its officials, assigns, and agents release Oracle and its successors, assigns, directors, officers, stockholders, parents, subsidiaries, agents, insurers, and attorneys from any and all rights, claims, actions, and demands of every kind and nature, in law, equity, or otherwise, known or unknown, disclosed or undisclosed, suspected or unsuspected, including, without limitation, any claims for damages, actual or consequential, past, present, or future, which arise out of or relate to the Ordering Document and the Program license and technical support services ordered therein.
5. Oracle and its successors, assigns, directors, officers, stockholders, parents, subsidiaries, agents, insurers, and attorneys release the County and its officials, assigns, and agents from any and all rights, claims, actions, and demands of every kind and nature, in law, equity, or otherwise, known or unknown, disclosed or undisclosed, suspected or unsuspected, including, without limitation, any claims for damages, actual or consequential, past, present, or future, which arise out of or relate to the Ordering Document and the Program license and technical support services ordered therein. Notwithstanding the above, Oracle expressly does not release or waive any claims that Oracle had, has, or may have for infringement of copyrights, patents, trademarks, trade secrets, or other intellectual property rights, or for breach of any nondisclosure agreements.
6. The parties represent and agree that they have not filed or pursued and will not file or pursue any charges, suits, complaints, grievances, or other actions that assert, arise out of, or relate to the claims released under this Agreement. This paragraph shall not apply to any action or claim to enforce the terms of this Agreement.
7. The parties represent that they have read and been advised by counsel regarding this Agreement, that they understand its terms and legal effect, and that they are voluntarily entering into this Agreement. The parties acknowledge that this Agreement is a full, fair, and final resolution of all claims released under this Agreement. The parties further represent that, in executing this Agreement, they are not relying on any inducements, promises, or representations other than those expressly set forth in this Agreement.
8. The individuals signing this Agreement and the parties represent and warrant that they have full and complete authority and authorization to execute and effect this Agreement and to take or cause to be taken all acts contemplated by this Agreement.
9. Each party represents and warrants that it owns and has not assigned, sold, transferred, or otherwise disposed of any claim or any interest in any claim against the other party released in this Agreement.

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10. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed according to the procedural and substantive laws of the State of Florida.

11. The parties agree that any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Miami-Dade County, Florida. The parties agree to submit to the exclusive jurisdiction of, and agree that venue is proper in, these courts in any such action or proceeding.

12. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements or representations, written or oral, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by each party's duly authorized representative. No other act, document, usage, or custom shall be deemed to amend or to modify this Agreement.

Very truly yours,

Handwritten signature of Deborah K. Miller, followed by the initials "/JMM".

Deborah K. Miller
Vice President & Associate General Counsel

BY SIGNING, MIAMI-DADE COUNTY, FLORIDA ACCEPTS AND AGREES TO THE
TERMS SET FORTH ABOVE.

Dated: _____

Signature: _____

Printed Name: _____

Title: _____

Approved as to form and legal sufficiency:

Assistant County Attorney